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October 30, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

Re: MM Number Docket No. 97-182

Dear Mr. Caton:

Transmitted herewith, on behalf of McGraw Hill Broadcasting Company, Inc., are an original and nine copies of its "Comments" submitted in MM Docket Number 97-182: In the Matter of Preemption of State and Local Zoning and Land Use Restrictions on the Siting Placement and Construction of Broadcast Station Transmission Facilities.

In the event there are any questions concerning this matter, please contact the undersigned.

Very truly yours,



Arthur B. Goodkind

Enclosure

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
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Preemption of State and)
Local Zoning and Land Use) MM Docket No. 97-182
Restrictions on the Siting,)
Placement and Construction of)
Broadcast Station Transmission)
Facilities)

COMMENTS OF MCGRAW-HILL BROADCASTING COMPANY, INC.

McGraw-Hill Broadcasting Company, Inc. ("McGraw-Hill") files herewith, by its attorneys, its comments in response to the Notice of Proposed Rule Making issued August 19, 1997 in the above-captioned matter.

This proceeding stems from a request filed by the National Association of Broadcasters (NAB) and the Association of Maximum Service Telecasters (MSTV) that the FCC act to preempt certain local zoning regulations that may otherwise prevent or delay the introduction of DTV television broadcasting in many localities. On the basis of local regulatory obstacles McGraw-Hill has encountered and expects to continue to encounter with respect to its Denver television station, McGraw-Hill strongly supports the actions recommended by NAB and MSTV. We believe that information

concerning the Denver market experience will be of help to the Commission in this proceeding and the purpose of these comments is to place those facts in this record. We believe that the Denver situation is but one of many throughout the country in which local regulations may prevent or substantially delay the start of DTV television service.

McGraw-Hill is the licensee of television station KMGH-TV in Denver. KMGH operates from a 285 foot tower McGraw-Hill owns on Lookout Mountain in Jefferson County, Colorado, approximately 17 miles west of Denver. McGraw-Hill also owns the property on which the tower stands, as well as easements to access the tower and service it. Because the Lookout Mountain site is the best possible location for providing a line-of-sight signal to all of the Denver market east of the Rocky Mountains, a number of other television stations in addition to KMGH-TV have chosen to locate their transmitters there.

KMGH-TV has operated from its present site since the 1950's. At the time its present transmitting facility was built, it complied with all local ordinances and regulations. Since then, however, new ordinances and regulations have had the effect of making all communications towers on Lookout Mountain "non-

conforming uses." Given that status, the stations are prohibited from modifying their towers in any way.

As set forth in more detail in the attached Declaration of Ronald E. Jennings, Director of Engineering for McGraw-Hill, the best and by far the least expensive way for KMGH-TV to implement DTV operations would be to add a DTV antenna to its present tower. Doing so would not materially change the overall appearance of the tower and would not result in non-ionizing radiation in the vicinity of the transmitter in excess of Commission guidelines. Owing to local ordinances, however, it appears that this method of implementing DTV will be foreclosed to KMGH-TV (and, we believe, to all other television stations on Lookout Mountain). See the attached Declaration of Michael D. Martin, Esq., Denver counsel for McGraw-Hill in land use matters, and the applicable local ordinances and regulations appended to Mr. Martin's Declaration.

As an alternative, albeit a far more expensive and less desirable one, McGraw-Hill has discussed with other Denver television stations a joint tower proposal under which the DTV antennas of as many as six television stations would be mounted on a single new joint tower on Lookout Mountain. Under this proposal, the stations would continue to broadcast digital

television signals from the joint tower after the DTV transition was completed and the station's present NTSC towers would be demolished at that time.

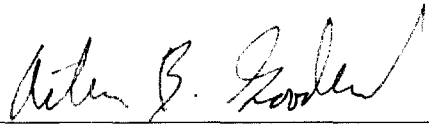
As set forth in the attached Martin Declaration, there is no assurance that even such a joint tower proposal can obtain the required local regulatory approvals. If such approvals cannot be obtained, McGraw-Hill has thus far found no other practicable alternative for implementing DTV broadcasting by KMGH-TV. Moreover, even if local regulatory approvals can ultimately be obtained, the time required to do so may well prevent implementation of DTV broadcasting by the November 1, 1999 date required under the Commission's timetable for network-affiliated stations such as KMGH-TV.

Given these circumstances, preemptive actions such as those recommended by NAB and MSTV are essential if implementation of DTV broadcasting in Denver is to occur by November 1, 1999 or,

perhaps, at all. McGraw-Hill therefore supports the NAB/MSTV proposals and urges their adoption.

Respectfully submitted,

MCGRAW-HILL BROADCASTING COMPANY,
INC.

By: 
Arthur B. Goodkind
Koteen & Naftalin, L.L.P.
1150 Connecticut Avenue, N.W.
Suite 1000
Washington, D.C. 20036
(202) 467-5700

October 30, 1997

ATTACHMENTS TO COMMENTS OF
MCGRAW HILL BROADCASTING COMPANY, INC.,
MM DOCKET NO. 97-182

- Declaration of Ronald E. Jennings
- Declaration of Michael D. Martin

DECLARATION OF RONALD E. JENNINGS

I am the Director of Engineering for McGraw Hill Broadcasting Company, Inc. McGraw Hill is the licensee of four television stations, including station KMGH-TV, Denver, Colorado.

Under the DTV transition timetable established by the FCC, stations in Denver are required to commence DTV operations by November 1, 1999. McGraw Hill wishes to comply with this schedule and is committed to establishing a DTV operation in Denver as rapidly as practicable.

KMGH-TV presently broadcasts its NTSC signal from a 285 foot tower located on Lookout Mountain, approximately 17 miles west of Denver. From that site we are able to provide an excellent signal to those portions of the Denver market located east of the Rocky Mountains. Most other Denver television stations also have Lookout Mountain transmitter sites because that is by far the best location for providing signals to the Denver market.

KMGH-TV has operated from its Lookout Mountain site since the station originally went on the air in the 1950's. At the time KMGH-TV began operation there, it was in compliance with all then existing laws and ordinances. Subsequently, however, Jefferson County, Colorado has adopted new zoning ordinances and regulations which have had the effect of making all

communications towers on Lookout Mountain non-conforming uses. Because our tower is now a non-conforming use, our Denver counsel has advised us that we are prohibited from modifying it in any way.

Our preferred method of transitioning to DTV would be to mount a DTV antenna on the present KMGH-TV tower in addition to the NTSC antenna already located there. Our DTV antenna would be mounted just below our NTSC antenna. Following the end of the DTV transition period, one of the two antennas would be removed. We would need to do further studies to determine whether our tower could be strengthened to accommodate a second antenna and transmission line, but I believe that by selecting the right combination of antennas the current tower, with strengthening, would support both NTSC and DTV services. My preliminary and rough calculations indicate that the cost of mounting a DTV antenna on our present tower, including any strengthening that may be required, would not exceed \$1,000,000 for tower work, the new antenna(s), and transmission line. The overall appearance of our tower under this conversion scenario would not be substantially changed, and our operations would continue to comply with all Commission regulations with respect to non-ionizing radiation in the vicinity of our transmitter.

Unfortunately, local zoning authorities have made it clear that we have no chance of obtaining the non-conforming use approvals necessary to carry out this sensible and practical DTV conversion plan. For that reason, we have explored with several other Denver stations the formation of a joint venture that would construct a new tower to accommodate the new DTV antennas of as many as six local television stations. If such an agreement is reached among the stations, the joint venture would seek approval for the new joint tower from local zoning authorities, proposing additionally to dismantle the participating stations' existing NTSC towers after the DTV transition period has ended. That would be no earlier than 2006.

Any new joint tower would necessarily be for DTV use only. There is no economically feasible way to shift both the Denver stations' existing NTSC antennas and their new DTV antennas to a single joint tower. That would require each station to purchase new NTSC transmitters and antennas at very substantial cost (our present NTSC antenna and transmitter at KMGH-TV cost \$750,000 and are only two years old). It would also require construction of an impractically massive joint structure capable of accommodating as many as 12 different antennas and associated transmission lines.

We have no assurance that even a joint tower venture will be able to obtain the zoning approvals such a tower would require. We have been advised by counsel that the approval process itself may well be very time consuming and that, given possible opposition from nearby property owners, final zoning approval is by no means certain. Even if approval can be obtained, there is doubt that the approval process can be completed in time to permit Denver stations to achieve a DTV on-air date in 1999.

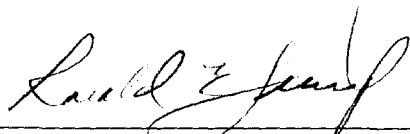
Local zoning regulations may thus prevent us from achieving DTV conversion under any reasonable time schedule.

First, we feel that we could realistically achieve a November 1, 1999 conversion date if we were able to add a DTV antenna to our present tower. That method of conversion would also be at least \$1,600,000 less expensive for McGraw Hill than participating in the joint tower proposal now being considered. Adding a second antenna to our existing tower would not substantially alter the tower's appearance during the DTV transition years and, after the NTSC antenna was removed at the end of the transition, would result in a tower holding a single TV antenna, just as is now the case. But this comparatively inexpensive and quick method of converting to DTV will clearly be

foreclosed to us under local zoning regulations unless the FCC acts to preempt those regulations.

Second, any joint tower group we join will be forced to endure a protracted zoning approval process with respect to the proposed new joint tower. Even if such approval is ultimately obtained, it is unlikely to come in time to permit Denver stations to meet the Commission's DTV transition schedule. If zoning approval for joint tower should not be obtained, we have as yet no practical alternative plan for carrying out the DTV transition. For this reason, we urge the Commission to preempt local zoning regulations that will prevent or substantially delay DTV conversion, which would almost certainly be the case in Denver absent such preemption.

I declare under penalty of perjury that the foregoing is true and correct.



Ronald E. Jennings

29 OCT 1997

(Date)

DECLARATION OF MICHAEL D. MARTIN

1. I am a lawyer licensed to practice law in Colorado. I have been a member of the Colorado Bar Association since 1970, and I am a partner in the law firm of Holland & Hart. As such, I am familiar with local ordinances and land use rules and regulations in force in Colorado, and I have represented the licensee of KMGH-TV with respect to such matters.

2. The local ordinances that affect KMGH-TV's preferred plan of adding DTV capacity to the present tower are the zoning ordinances and land use regulations of Jefferson County, Colorado.

3. KMGH-TV's existing tower is located on Lookout Mountain, which is immediately west of the Denver metropolitan area, and the tower complied with local requirements at the time originally constructed. Subsequent to the construction of the tower, Jefferson County has adopted new regulations which have the effect of making all communication towers on Lookout Mountain non-conforming uses. As a non-conforming use, KMGH may not be permitted to reconstruct or expand the uses of the existing tower but is limited to conducting maintenance operations which have the effect of continuing the existing tower's useful life but in its present configuration only. A copy of the relevant Zoning Resolution is attached.

4. There are several transmitting towers located in the vicinity of KMGH-TV because of the site of the tower provides an excellent signal to the "front range" where the City and County of Denver is located. Jefferson County has entered into negotiations with all the owners of the towers to exchange the right to build one jointly owned new tower for purposes of transmitting DTV in exchange for the future demolition of the existing towers.

5. In order to obtain a permit for the new tower, KMGH-TV, through the joint venture of all tower owners, must submit a land use application for a special use permit to the Planning and Zoning Commission. The Commission holds a number of study or work sessions with the applicant designed to reach some consensus with the applicant and the Commission. The Commission then holds a series of public hearings and votes to either recommend approval or denial of the application by the Board of County Commissioners (the "Board"). The application is then forwarded to the Board for approval or denial. The procedures required by the Board are entirely de novo and require additional public hearings. It is our experience that very few applications for permits are approved by the Board if the Planning and Zoning Commission has recommended denial. Further, a significant number of permits are denied even if the Planning and Zoning Commission has previously recommended approval.

6. If KMGH becomes part of a joint venture to construct a new joint tower for the DTV antennas of multiple stations, it is possible that a permit to build the joint tower will be recommended for denial by the Commission or be denied by the Board. If the application is ultimately approved by the Board, opponents may appeal the decision to the District Court in Jefferson County and then to appellate courts. Thus, there is no assurance that the permit will be obtained or, if obtained, that it will be issued in time to complete construction of the tower by November 1, 1999 in order to commence DTV broadcasting by FCC required date of November 1, 1999.

I declare under penalty of perjury that the foregoing is true and correct.

Michael D. Martin
Michael D. Martin

October 24, 1997
(Date)

DENVER:0797859.02

Z O N I N G

RESOLUTION



June 7, 1994

- d. The minimum number of off-street parking spaces, use and zone district in which the property is located. (orig. 8-6-80)
2. All plans shall be reviewed by the Zoning Administrator or his representative and shall either be approved or disapproved. (orig. 12-9-57; am. 8-6-80)
3. Upon approval of any parking plan, hereunder, a copy of the parking plan shall be filed with the Building Permit. (orig. 12-9-57; am. 8-6-80)
4. Parking Stalls Shared Jointly:

Provision of parking stalls shared jointly by several persons in the same block or in the same vicinity is permissible, in which case, the number of stalls required shall be the sum total of the individual requirements provided. (orig. 12-9-57; am. 8-6-80)

M. GROUND AND BUILDING LIGHTING

1. Ground and building lighting shall be confined to the property and shall not cast direct light or glare on adjacent properties or rights-of-way. (orig. 6-14-88)
2. Maximum height of on-site pole lights shall be 20 feet. (orig. 6-14-88)

N. TELECOMMUNICATIONS FACILITY:

1. The following applies to all telecommunications towers and facilities that are not allowed as a use by right in a standard zone district. (orig. 5-11-83)
 - a. Unless otherwise allowed by this resolution, all new telecommunications towers, antennas and accessory facilities and any increase in the size of a legal nonconforming telecommunications tower for the following uses must be submitted for rezoning to planned development or for special use approval: radio, television, microwave, meteorological data collection, land-mobile, and other similar broadcast transmission and receiving activities. (orig. 5-11-83; am. 8-7-94)
 - b. Unless in conflict with the Official Development Plan or special use approval, additional antennas and equipment may be added to a facility that has received zoning or special use approval from the Board of County Commissioners of Jefferson County, existing antennas on an approved facility may be modified, and the power output of existing antennas on an approved facility may be increased without a hearing provided the standards and procedures outlined in ANSI standard C-95.1 or any revisions thereto, County regulations concerning non-ionizing electromagnetic radiation, OST Bulletin No. 85 and Electronics Industries Association (EIA)-RS 222 (E) or the latest revision thereof are complied with. The Planning and Zoning Department shall be notified within 14 days of any change in or addition of antennas whose transmitter power output exceeds 1000 watts of radio frequency power output. The Planning and Zoning Department may request copies of plans depicting such modification and other evidence necessary to demonstrate that such modifications are in compliance with the provisions of this Section and with the Official Development Plan or special use approval. (orig. 5-11-83)
 - c. Any modifications to approved facilities must be consistent with the specifications in EIA - RS 222 in its current adopted revision. The Planning and Zoning Department must be notified at least 30 days prior to any modification to increase the wind or weight loading capacity, height, or footprint of a tower, and may request copies of plans depicting such

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modification and other evidence necessary to demonstrate that such modifications are in compliance with the provisions of this Section and with the Official Development Plan or special use approval. (orig. 5-11-93)

2. Non-Ionizing Electromagnetic Radiation Standards (NIER) and Procedures:

- a. A new source of NIER or increase in NIER from an existing source, when combined with existing sources of NIER, shall not expose the general public to ambient radiation exceeding that defined in OST-85 and ANSI C95.1; provided, however, that if a federal or local standard is adopted that is more stringent than the standard set forth herein, such other standard shall apply. (orig. 5-11-93)
- b. Before establishing a new source of NIER or changing an existing NIER source that exceeds 1000 watts of radio frequency output power per transmitter in a way that increases the amount or changes the radiation pattern of NIER, an applicant shall submit the following information. (orig. 5-11-93)
 - (1) Frequency, antenna gain, direction of main lobe, if any, power output of transmitter and effective radiated power. In lieu of this, a copy of the applicant's submission before the FCC will suffice. (orig. 5-11-93)
 - (2) Type of modulation and class of service. (orig. 5-11-93)
 - (3) Location of the antenna by geographical coordinates, including center of radiation (COR) and height above grade. (orig. 5-11-93)
 - (4) Horizontal and radial distance from the NIER source to the nearest habitable space regularly occupied by persons other than employees of the transmitter, antenna, and/or tower owner, and the points on and off the property with the highest calculated NIER levels from the proposed new source in combination with existing sources (this may be shown in graphic form). The party responsible for the new NIER source shall measure the NIER level at up to 12 sites selected by mutual agreement of the applicant, the resident community, and the Planning and Zoning Department. (orig. 5-11-93)
 - (5) Ambient NIER levels in the frequency range of the proposed source and calculated cumulative NIER levels after establishment of the proposed new or changed NIER source measured at the locations set forth in the preceding paragraph. (orig. 5-11-93)
- c. Calculations and measurements of NIER will not be required for any new source of NIER if the facility will operate at 1000 watts of radio frequency transmitting power or less. (orig. 5-11-93)
- d. Field measurements documenting that facilities covered by this Section comply with the applicable standard set forth herein shall be submitted within 90 days after each installation, whether new or modified, becomes operational and is functioning at its maximum approved power. (orig. 5-11-93)

3. The following regulations shall apply to all low power, micro-cell, and repeater telecommunications facilities that are allowed by this Zoning Resolution as a permitted use or special use. See Table 2-1 and permitted uses in specific zone districts for additional regulations. (orig. 6-7-94)